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December 19, 2008

VIA INTERNET

RAMON J. HIRSIG
Executive Director

Dear Interested Party:

The Sales and Use Tax Department (SUTD) Audit Manual (AM) is a guide in conducting sales and use tax audit for its tax auditors. It is also available to the public. The SUTD is proposing to revise AM section 0611.15, *Interstate Deliveries from California Stocks*. This section 0611.15 was last revised in October 2006.

In accordance with the recent passage of Assembly Bill 1452, AM section 0611.15 is being revised to incorporate the application of the 12-month test period to vehicles purchased outside California on or after October 1, 2008. The 12-month test period was previously applicable only to vehicles purchased from October 2, 2004 to June 30, 2007. This revision limits the application of the 90-day test period to vehicles purchased prior to October 2, 2004 and from July 1, 2007 to September 30, 2008. The full text of the revised section is displayed on the following pages for the convenience of interested parties who may wish to submit comments or suggestions.

If you have any comments or suggestions *related solely to the proposed changes described above*, you may contact the Department at AM.RevisionSuggestions@boe.ca.gov, or you may submit your comments or suggestions to:

Ms. Nini McCormack
Sales and Use Tax Department
State Board of Equalization
P.O. Box 942879
Sacramento, CA 94279-0050
Fax: (916) 322-2958

Your comments or suggestions regarding the proposed changes must be received by **February 19, 2009** in order to be considered by staff. Thank you for your consideration.

Sincerely,

Jeffrey L. McGuire, Chief
Tax Policy Division
Sales and Use Tax Department

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INTERSTATE DELIVERIES FROM CALIFORNIA STOCKS

0611.15

Claimed interstate sales from a dealer's California stock usually fall into one of the following categories:

- a. Delivery to a carrier for shipment out of state
- b. Delivery out of state by dealer's employee or agent
- c. Delivery in-state to an out-of-state purchaser or purchaser's agent
- d. Delivery out of state to a known California resident

Under (a), the sale is exempt if delivery is made to a carrier, consigned to an out-of-state point, and actually shipped to the out-of-state point, provided the vehicle was not purchased for use in California. The dealer should retain a copy of the bill of lading to support the deduction and evidence of customer's out-of-state address. The auditor should ascertain who delivered the unit to the carrier, and that the vehicle was not in the possession of the purchaser or the purchaser's agent in this state at any time before the shipment. The use of form BOE-448, *Statement of Delivery Outside CA*, is not necessary when the out-of-state delivery is properly supported by a bill of lading or other shipping documents ([AM](#) section 0611.05).

The purchaser is liable for the use tax for a vehicle purchased outside California if the first functional use of the vehicle is in California, ~~or~~. If the first functional use is outside California but the vehicle is brought into the state within the applicable test period, the purchaser may also be liable for the California use tax. The applicable test period is generally dependent upon the purchase date of the vehicle, as illustrated below:

<u>Purchase Date</u>	<u>Test Period</u>
<u>Prior to October 2, 2004</u>	<u>90-Day Test*</u>
<u>October 2, 2004 – June 30, 2007</u>	<u>12-Month Test</u>
<u>July 1, 2007 – September 30, 2008</u>	<u>90-Day Test*</u>
<u>On or after October 1, 2008</u>	<u>12-Month Test</u>

*The 90-day period is exclusive of any time for shipment or storage for shipment to California.

If the applicable test period is 90 days, the purchaser is liable for the use tax if during the six-month period immediately following the vehicle's entry into this state, one-half or more of the miles traveled by the vehicle are miles traveled in California or the vehicle is not used or stored outside California one-half or more of that time.

If the applicable test period is 12 months, the purchaser is liable for the use tax if any of the following occurs:

- ~~• Prior to October 2, 2004 and after June 30, 2007, the vehicle's first functional use is outside California, but the vehicle is brought into the state within 90 days after its purchase (exclusive of any time for shipment or storage for shipment to California), and during the six-month period immediately following its entry into this state, one-half or more of the miles traveled by the vehicle are not miles traveled in interstate commerce, or the vehicle is not used or stored outside of California one-half or more of that time. Examples of what constitutes~~

~~interstate commerce are described in Regulation 1620.~~

- ~~From October 2, 2004 to June 30, 2007, the vehicle's first functional use is outside California, but the vehicle is brought into the state within 12 months after its purchase and one of the following occur:~~
 1. The vehicle was purchased by a California resident.
 2. The vehicle was subject to registration under Chapter 1 (commencing with section 4000) of Division 3 of the Vehicle Code during the first 12 months of ownership.
 3. The vehicle is used or stored in California more than one-half of the time during the first 12 months of ownership.

Situations under (b) arise when a dealer is requested to make delivery in a neighboring state. *The transaction is not taxable if the car is actually delivered by an employee acting as agent of the dealer, or by some other individual acting as agent of the dealer.* The fact that the person delivering is in fact the agent of the dealer must be clearly established in each case. Affidavits, reimbursement by the dealer for expenses, or payment of a fee by the dealer are usually sufficient supporting evidence. *In the absence of evidence to the contrary, such a sale cannot be held exempt from tax if California license plates are secured for the delivered car.* The fact that the purchaser accompanied the dealer's agent who drives the vehicle to an out-of-state location does not negate the exemption if the purchaser does not exercise control over the driver or the vehicle. See [AM section 0611.45](#) for information on sales to military personnel.

Form BOE-448, *"Statement of Delivery Outside CA,"*² can be used when the vehicle is driven or transported to an out-of-state point by the dealer or the dealer's authorized agent, with the purchaser taking delivery outside California ([AM section 0611.05](#)).

Under (c), delivery to a consumer or his/her agent in this state ~~is~~ [causes the sale of the vehicle to be](#) a taxable transaction. Regardless of the evidence that the vehicle was driven or shipped out of state by the purchaser or purchaser's representative, Sales and Use Tax Law section 6009.1 exemption is not applicable since this is a sales tax transaction ([AM section 0635.35](#)). Vehicles in this situation are usually driven out of state on one-trip permits or on plates of another state. The auditor must be alert to deliveries to the purchaser's agent where the dealer represents that the person is the dealer's agent through affidavit or payment of expenses. The person cannot act in a dual capacity as agent of both buyer and seller.

Under (d), Sales and Use Tax Law section 6247 creates a presumption that a sale of a vehicle when a dealer delivers a vehicle outside California to a known California resident, is a sale for use in this state. The purchaser is considered a California resident, for example, if he or she has a California driver's license, or has a California address, even though the purchaser may live in the state only seasonally or intermittently.

Form BOE-447, *"Statement Pursuant to Section 6247 of the California Sales and Use Tax Law,"*² is intended to relieve the retailer of the obligation to collect the use tax from purchasers who may be permanent, seasonal, or intermittent residents of California. This statement should be taken at the time of sale, and

the original document retained in the retailer's records. This document is needed when the purchaser has a California address and/or a California driver's license or the dealer otherwise is aware that the purchaser is a California resident ([AM S](#)section 0611.05).